

A SECOND LOOK AT PUBLIC WATER AUTHORITIES

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In the 2001 legislative session, the Arkansas General Assembly passed legislation (the "PWA Act") to allow private, non-profit water associations to convert into public water authorities ("PWA"). Because of their status as "governmental entities," these new PWAs had the authority to directly issue tax-exempt debt like a city waterworks or a public facilities board (in other words, without using a middle-man, like a public facilities board or the Arkansas Development Finance Authority and without the additional cost). Between the 2001 and 2003 legislative sessions, approximately 19 non-profit water associations converted to PWAs.

As rural water providers evaluated the PWA Act, many determined that it should be expanded to allow entities other than non-profit corporations to convert to, or start up, a PWA. Others felt that the conversion process itself needed clarification. Still others simply did not want to be the guinea pig.

In the 2003 legislative session, the Arkansas General Assembly made substantial amendments to the PWA Act to address many of these concerns. Although many of the amendments were technical in nature, the most substantial change involved the broadening of the PWA Act to allow just about anybody to form a PWA from scratch. For example, a public facilities board, a water distribution district or a city could form a PWA, sell its assets to the PWA and operate the water system as a PWA; or, a group of individuals could form a PWA and build a water system from the ground up. In any case, the PWA Act provides a relatively easy procedure for creating an entity with the power to operate a waterworks system and finance its construction or improvement on a tax-exempt basis.

From a technical perspective, the amended PWA Act clarified that the new PWA would serve a specific geographic area and would be regulated by the Arkansas Soil and Water Conservation Commission (the "ASWCC"). It further specified that non-profit corporations seeking conversion would need the approval of its membership and that the water users in the service area would continue to elect the governing board of the PWA. For its part, the ASWCC has issued new rules and regulations governing the procedure for filing and approving PWA applications.

The amended PWA Act became effective on April 16, 2003 and since that time approximately 5 new PWAs have been formed.

Given these changes to the PWA Act and its ever-increasing use in the industry, rural water providers that have not converted to, or formed, a PWA should take another look at this innovative and useful entity.

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